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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,403	12/19/2001	Brian K. Doyle	ADV12P302A	4925

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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/025,403	DOYLE ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 May 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,5,7,8,11,12,14-17,19,20,22-27,29-33 and 35-62* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,7,8,11,12,14-17,19,22-27,29-33,35-49,51-60 and 62* is/are rejected.

7)☒ Claim(s) *50, 61* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 44, 49, 56, 57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 5/13/05, applicant added new claims 56, 57 which recite the limitations of " greater than about 10% rice flour" and " at least about 10% rice flour". These limitations are not supported by the original disclosure. The new insertion in the specification discloses the coating could contain " 15% rice flour having a particle size of from about 100 mesh or greater, 15% rice flour having size of 100 mesh or less". There is no disclosure of " about 10% rice flour". About 10 includes values such as 10.5, 11,12 etc.. The lowest amount of rice flour is 15%. Claims 44 and 49 were accidentally left out in the 112 first paragraph rejection of the previous office action; however, the text of the rejection recites that the original disclosure does not disclose the amount of rice flour to be 10% which is the limitation in claims 44, 49.

The 112 second paragraph rejection is hereby withdrawn.

Claims 1-2,7,7-8,11-12,14-17,19, 22-27, 29-33,35-49, 51-60, 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cremer in view of Friedman et al for the same reason set forth in the previous office action.

The rejection of claims 1 and 20 over Junge is hereby withdrawn.

Claims 50 and 61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

There is no teaching or suggestion in the prior art to make a coating composition having the recited ingredients in the amounts claimed.

In the response filed 5/13/05, applicant argues there is nothing in the Cremer patent to suggest coating the outside of the dough and Friedman et al teach coating natural potato product, not dough. This argument is not persuasive. While Cremer does not teach coating the product, the Cremer product is a potato product that is made to resemble French fried potatoes. Friedman et al teach a coating for fried potato product; the coating enhances the eating quality of the fried potato product in terms of crispness and improves the storage under heat lamp. One would be motivated to coat the fried potato product of Cremer with the coating of Friedman et all for the obvious benefits disclosed by them. While Friedman et al disclose the potato product is formed from natural potato, there is no disclosed contraindication of its use in other potato product. Furthermore, the Cremer product is made from dehydrated potato which is obtained from potato; thus, the product is also considered a natural potato product. Applicant argues the rejection is based on hindsight. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time

the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Applicant further argues that Cremer teaches away from the coating because he discloses that the amylose starch component forms a film. It is not seen how this disclosure teaches away from adding the coating because the coating of the potato product does not take away this film. The coating, in addition to providing the benefits disclosed by Friedman, will inherently give additional barrier which would further prevent undue imbibition of oil.

In the response, applicant also submits a 132 declaration to overcome the rejection of claims 1 and 20 over the Junge reference. Since the rejection is withdrawn, the declaration is no longer relevant.

Applicant's arguments filed 5/13/05 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 22, 2005

Lientran

LIEN TRAN
PRIMARY EXAMINER
Group 1700